IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.43 OF 2004

IN

SUMM.SUIT NO.2378 OF 2003

Tips Industries Ltd .. Plaintiff

versus

G.S.Entertainment .. Defendant

...

Mr.H.N.Thakore, Ms Vibhuti Desai, Mr.A.A.Baradia,
i.b Thakore Jariwala for Plaintiff
Mr S.Bangar i/b Media Lexicon for Defendant.

CORAM : D.G. KARNIK, J

DATED : 23rd March 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in the suit filed for recovery of the money advanced to the defendant.

2. The defendant is a producer of a film. By an

agreement dated 7th February, 2000 the plaintiff agreed to finance the defendant for production of a film and the defendant agreed to assign the copyrights p in the film which was to be produced by it to the plaintiff. It was agreed that the plaintiff would advance total loan of Rs.5,75,000,00/- in the manner mentioned in para 7 of the agreement. The defendant was to complete the film and deliver the master tape alongwith original recording containing songs, dialogue to the plaintiff on 31st March, 1994 with a grace period of 60 days. In pursuance of the said agreement the plaintiff advanced to the defendant Rs.3,50,00,000/- as mentioned in Exhibit B to the plaint. The defendant however was unable to complete the film and to give the delivery of the master tape within the stipulated time. On account of this, it was agreed between the parties that the defendant would refund to the plaintiff the sum of Rs.3,50,00,000/- paid by the plaintiff to it under the agreement dated 7th February, 2000 on or before 24th September, 2002. The defendant also gave post dated cheques for the repayment. The plaintiff on his turn agreed that it would give up the claim for interest in the event the defendant made the full repayment on or before 24th September, 2002. Few of the cheques

issued by the defendant were honoured and the plaintiff recovered Rs.2,50,00,000/- However, the balance amount of Rs.1,00,00,000/- was not paid by the defendant and four cheques of Rs.25,00,000/- each issued by the defendant were dishonoured. Hence, the plaintiff has filed this suit for the recovery of the balance due and interest.

3. Learned counsel for the defendant submits that the defendant has made full repayment. However, he is unable to give the dates of the payment except for the admitted payment of Rs.2,50,00,000/-. No books of accounts are produced by the defendant nor any other material produced to show the payments. The fact remains that four cheques for Rs.25,00,000/- issued had been dishonoured. Learned counsel for the defendant submits that the fact that the plaintiff has given up the claim for copyright shows that the plaintiff must have received the entire money. I am unable to accept this submission. The plaintiff gave up the claim for copyright to claim as an unsecured creditor to bring the suit within the summary jurisdiction of the court.

4. Learned counsel for the defendant subnmits that it

is not liable to pay interest because, under the agreement dated 4th April, 2002 the plaintiff has given up the claim for interest. This defence is also without any substance because, under the said agreement the plaintiff had agreed to give up the interest on receipt of the full sum from the defendant on or before 24th September, 2002. This is clear from the terms contained in letter dated 4th April, 2002.

5. Thus, the defences raised have no substance. In the normal circumstances, the plaintiff would have been entitled to a decree forthwith. However, as an act of mercy, I am inclined to grant conditional leave to the defendant. Hence, I am passing the following order:

> " The defendant is granted conditional leave to defend the suit subject to it depositing the principal sum of Rs.1,00,00,000/- in this court within four weeks. On such deposit suit shall stand transferred to the list of commercial causes. If the same is deposited the plaintiff is entitled to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master and

Registrar (O.S.)."

6. On payment of money, suit shall stand transferred to the list of commercial causes,. The defendant shall file the written statement within one month.

D.G.KARNIK, J